of the Factories Act is directed. The appellant having established the respondents' breach of statutory duty which gave him a right to damages, it was for the respondents to prove contributory negligence against him. In our opinion this they failed to do."

In my judgment, in the instant case, on the evidence before me the defendants had failed to prove contributory negligence on the part of the plaintiff. Accordingly I entered judgment for the plaintiff in the sum of $22,500 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Cooma, Lau & Loh.*

YEO JIN BUNG v. HONGKONG AND SHANGHAI BANK (SINGAPORE) TRUSTEE LTD. & ORS.

[A.C.J. (Choor Singh J.) July 7, 1978]
[Singapore — District Court Appeal No. 55 of 1976]

Landlord and Tenant — Claim for possession — Allegation that tenant received rents from subtenants exceeding 110% of rent payable by tenant — Tenant subletting portions of house — Rooms away from main building built by tenant and sublet to tenants — P.U.B. Services supplied to subtenants at expense of tenant — Apportionment of rent and payments — Control of Rent Act (Cap. 266), s. 15(1)(g).

This was an appeal from the judgment of the district court which gave possession of the premises to the respondents. The appellant had been a tenant of the premises since before the Japanese occupation. She had carried out repairs, alterations and additions to the building and built new rooms away from the main building. She occupied only a part of the premises and sublet the remaining rooms to subtenants at various rents. Some of the rooms were let furnished. The appellant provided all the P.U.B. services to her sub-tenants at her expense. The learned District Judge held that as the rents collected by the appellant in respect of the rooms exceeded 110% of the rent paid to the respondents, she was in breach of section 15(1)(g) of the Control of Rent Act. The appellant appealed.

Held, allowing the appeal: (1) the learned District Judge had failed to take into consideration the fact that the appellant had constructed certain rooms away from the main building, that she paid for the P.U.B. services and that some of the rooms were let furnished and that she retained a portion of the premises for her own occupation;

(2) there should have been an apportionment of the rentals in this case but this was not done;

(3) in the circumstances there was no satisfactory evidence before the court for the application of section 15(1)(g) of the Control of Rent Act.

Cases referred to:-

(1) *Reshty* v. *Syed Ahmed Al-Junied & Ors.* [1966] 2 M.L.J. 121.

(2) *Kwek Kim Hock* v. *Ong Boon Siong* [1954] M.L.J. 253, 254.

CIVIL APPEAL.

Kirpal Singh for the appellant.

S. Velupillai for the respondent.

Cur. Adv. Vult.

Choor Singh J.: This was an appeal against the judgment of a district court. The appeal arose from a claim by the plaintiffs for possession of the premises known as 81 Wilkie Road, Singapore.

The defendant became a tenant of the premises before the Japanese occupation of Singapore. The premises are accordingly "rent controlled". It is a very old two-storied bungalow with a compound and out-houses. The defendant has been a tenant in occupation for some 40 years and during this period has been carrying out repairs, alterations, additions and building new rooms without anybody questioning her because the property belongs to the estate of a deceased person. The defendant occupied only a part of the premises where she lived with her family and she has been sub-letting the remaining rooms at various rents. Some of the rooms were let furnished and others unfurnished. The P.U.B. charges were borne by the defendant and all her sub-tenants received free water, light and other services. The rooms sublet by the defendant clearly fell into three distinct categories; rooms built by the defendant, rooms let furnished and rooms let unfurnished. And an additional complicating factor was that the defendant provided all P.U.B. services to all her sub-tenants at her expense.

It was only in 1975 that the trustees of the estate of the deceased decided to recover possession from the defendant, and after the requisite Notice to Quit, they commenced these proceedings. They claimed that they were not precluded by the provisions of the Control of Rent Act (Chapter 266) from recovering possession by virtue of section 15(1)(g) of the said Act. They alleged that the defendant was in breach of that section which provides as follows: —

"15. — (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Act may be made in any of the following cases, namely:—

(g) where the tenant having sublet the premises or part thereof receives in respect of that subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per cent of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him; ..."

The evidence put before the learned District Judge showed that the defendant was paying to the plaintiffs a monthly rent of $144 and collecting from her subtenants in respect of rooms let out by her a total sum of about $600 per mensem. The learned District Judge after considering all the evidence and the submissions made by both counsel, made an Order that the defendant deliver vacant possession to the plaintiffs of "the premises known as 81 Wilkie Road, Singapore". The defendant appealed against the whole of the decision of the learned District Judge.

At the hearing of the appeal before me, I noticed that there were in the judgment of the learned District Judge errors of law on account of which the judgment could not be sustained. I propose to deal with only three of them.

First, in my judgment, the learned District Judge erred in law in failing to take into consideration that certain rooms away from the main building were constructed by the defendant. Her evidence on this aspect of the case was not contradicted by the plaintiffs. She was quite clearly the owner of these rooms. Accordingly the rent collected from these rooms should not have been included in the total rent collected by her

from the sub-tenants. Strictly speaking there should have been an apportionment of the rent of each of these rooms i.e. so much for the land of which the landlord was the owner; so much for the building of which the defendant was the owner; and so much for the P.U.B. charges borne by the defendant. The learned District Judge states in his grounds: —

"the court also had regard to the fact that some of the rooms were built by the defendant. However, the court was of the opinion that no distinction should be drawn between rooms which were built by the defendant or rooms which were already in existence. . . ."

The learned District Judge is clearly in error here. The decision in *Reshty* v. *Syed Ahmed Al-Junied & Ors.*,[1] cited by him is entirely inapplicable. The learned District Judge has misapprehended that decision.

In cases where the building (rooms in this case) belongs to the tenant and the land on which it stands belongs to the landlord, it is very difficult if not impossible to apply the provisions of paragraph (g) of section 15(1) of the Act. This was pointed out very clearly by Taylor J. in *Kwek Kim Hock* v. *Ong Boon Siong*[2]: —

"It is impossible to apply paragraph (g) to these circumstances unless the rent actually paid by the occupant can be apportioned by the court, so much for the site and so much for the building, and the proportion for the rent attributable to the site exceeds 11 tenths of the ground rent. Such an apportionment would rarely be practicable and counsel for the landlord admitted that he could not attempt such an apportionment on the facts of this case. It follows that ground (g) cannot be established. . . ."

In this case, as already pointed out, there is the additional complicating factor in that the defendant paid for the P.U.B. services which therefore required a tripartite apportionment of the rent of the rooms built by the defendant. This would have been a very difficult exercise but in any case it was never attempted.

The second ground on which, in my judgment, the appeal succeeds is that there were rooms on the first floor of the premises which were let furnished. The defendant's evidence on this issue was uncontradicted and should have been accepted. Here again there should have been an apportionment, so much for the rent of the room, so much for the furniture and so much for the P.U.B. charges. The failure to do so was clearly an error of law. The opinion expressed by the learned District Judge in his judgment that "so long as the rent collected by the defendant in respect of the rooms at the above premises, exceed 110% of the rent she pays to the plaintiffs, she is in breach of section 15(1)(g) of the Control of Rent Act" is quite clearly erroneous having regard to the facts of this case.

The third ground on which, in my judgment, the appeal succeeds relates to the application of paragraph (g) of section 15(1) of the Act. In my judgment this paragraph applies in two situations. First, it applies in a case in which the tenant has sublet the whole premises to a sub-tenant. In such a case the burden of proof on a plaintiff is not a very difficult one if these are no other complicating factors. All that the plaintiff has to prove is that the tenant is collecting rent from his sub-tenant which exceeds in the aggregate 110% of the rent which the tenant pays to the plaintiff.

The second situation in which paragraph (g) applies is where the tenant has let only a part or parts of the premises and has retained and not sublet other parts of the premises as in this case. Such a situation complicates matters and the burden of proof on the plaintiff becomes difficult. In order to succeed, the plaintiff may proceed in one of two ways. First, if he can, he may prove to the satisfaction of the court, the "recoverable rent" for that part or parts of the premises which the tenant has sublet and having done that he must further prove that the tenant receives in respect of the sublet parts, rent in excess of the "recoverable rent" for those parts. The plaintiffs did not do this. They did not even attempt to do it.

The only other way in which a plaintiff may invoke paragraph (g) is by proving that the tenant receives for the sublet parts of the premises, rents which exceed in the aggregate 110% of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant and not sublet by him. This again was not done in this case. There was no apportionment of the rental between the parts sublet and the part retained by the defendant. This could have been done by taking measurements of the area of the premises retained by the defendant and not sublet and ascertaining its proportion to the total rentable area of the premises. This was not done. It was for the plaintiffs to do this. They should have put a computation before the court after having taken the necessary measurements and making the necessary calculations. The learned District Judge assumed that the defendant was occupying one-third of the premises. There was no evidence at all to support this assumption.

In the result, in my judgment, there was no satisfactory evidence before the court for the application of section 15(1)(g) of the Control of Rent Act. The appeal was accordingly allowed.

Appeal allowed.

Solicitors: *Kirpal Singh & Co.; Donaldson & Burkinshaw.*

KWAH HAI GONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) August 2, 1978]
[Singapore — Magistrate's Appeal No. 59 of 1977]

Criminal Law and Procedure — Possession of pirated copies of gramophone records — Proof that cassette tape is exact copy or reproduction of gramophone record — Whether offence to make or reproduce a single copy — Interpretation Act (Cap. 3), s. 2(1) — Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188), ss. 2 & 3.

Interpretation of Statutes — Word in plural — Whether includes singular — Interpretation Act (Cap. 3), s. 2(1).

Copyright — Gramophone record — Cassette tapes containing reproduction — Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188), ss. 2 & 3.

The appellant had been convicted of having in his possession cassette tapes alleged to contain reproductions of a gramophone record, an offence under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act. It appeared that the tapes were purchased from the appellant's shop and subsequently the records were listened to and found to contain copies of songs in which a copyright subsisted.